

Complaint Investigation Report
Parent v. Eastport
Date: December 31, 2007

Complaint Numbers: 08.022C and 08.032C
Complaint Investigator: Sheila Mayberry
Date of Appointment: September 7, 2007 and November 8, 2007

I. Identifying Information

Complainant: Parent
Address

Respondent: Omar Norton
Superintendent of Schools
Union #104
102 High Street
Eastport, Maine 04631

Special Education Director: Janet Weston

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation

The Maine Department of Education received Complaint No. 08.022C on September 6, 2007, and Complaint No. 08.032C on September 24, 2007. The complaint investigator was appointed on September 7, 2007 and November 8, 2007. The complaint investigator received 90 pages of documents from the Respondent and a tape recording from the Parent. In addition, the complaint investigator requested a copy of the Order of Dismissal in Hearing Request Case No. 08.025H. Interviews were conducted with the following people: the Parent; the Student; and Janet Weston, Director of Special Education in Union #104 (“District”). Both complaints were held in abeyance during a related due process hearing, which concluded without a decision on the merits of the allegations in these complaints.

III. Preliminary Statement

The Student is xx years and lives with her paternal grandmother, who is also her adoptive parent (Parent). She resided in Eastport, Maine until October 1, 2007, when she moved with the Parent to Cutler, Maine. Prior to the move, the Student had been enrolled in the District's Eastport Elementary School. At the time that the complaints were filed, the Student was still enrolled in the District. The Student has received special education services under the category of Emotional Disability. She has been diagnosed with Post-Traumatic Stress Disorder and Reactive Attachment Disorder.

IV. Allegations

1. Failure to develop an IEP for the 2007-2008 school year. MUSER §§VI.2.J, IX.3.D
2. Failure to develop a safety plan for the Student for the 2007-2008 school year. MUSER §VI.2.J
3. Failure to provide a FAPE during the 2006-2008 school years. MSER § 1.3; MUSER § VI.I.

V. Summary of Findings

1. The summary of findings established in complaint investigation report (CIR) No. 08.009C, which also incorporates findings in CIR No. 07.107C, is attached to this report. Additional findings are summarized below.
2. On August 3, 2007, Principal Lovina M. Wormell, Principal of the Eastport Elementary School, contacted the Parent to schedule a meeting to discuss the development of a safety plan for the Student, as recommended in CIR No. 07.107C. The Parent chose not to attend a meeting that was convened on August 7, 2007 with various District administrative staff members. A draft safety plan was developed for the Student. Janet Weston, the District's Special Education Director, reported to the complaint investigator that the draft plan was not sent to the Parent. Once she read it, she believed that the Parent's input was necessary and suggested that the District wait to obtain her input.
3. An IEP meeting was convened on August 28, 2007, to discuss the development of the Student's IEP for the 2007-2008 school year and to establish an end date for Extended School Year services, which included in-home summer tutoring. A tape recording of the meeting was submitted to the complaint investigator by the Parent. It was apparent from the recording that several issues were discussed. It was determined that ESY services would end on August 31, 2007. The team also discussed a workshop on the topic of bullying which was attended by some of the District staff members. The team had a lengthy debate over the Student's 2007-2008 IEP. Ms. Weston proposed that, until the neuropsychological evaluation that had been ordered by the Parent was available, the Student's IEP for the 2007-2008 school year should include one-on-one assistance in math. She also

proposed assistance in completing and checking her assignments for accuracy. The team agreed that the Student made very good progress due to the ESY services, but it was apparent that she still needed help in math, according to Ms. Weston. Although the Parent did not disagree with this proposal, she told the team that the Student was not prepared to return to school because of the lack of trust she had in the school's principal and another staff member. The Parent explained that the lack of trust stemmed from how the District's administration handled the Student's complaints of bullying, believing that the District put blame on her for the incidents that occurred. The Parent stated that the Student needed to discuss her lack of trust with the neuropsychologist, and would not be able to attend school until after this had occurred. Ms. Weston informed the Parent that the District would not be providing in-home tutoring while the team waited for the neuropsychological evaluation, because to do so would not be the least restrictive environment for the Student. She stated that the District was willing to "process" what had happened with the Student and develop a plan for her safe return to school. She stated that the District wanted to make the Student feel comfortable in attending school, and would work with the Student to make that happen. She stated that, until there was documentation to support a need for in-home tutoring, the District was not willing to provide special education services to the Student if she did not attend school. The Parent told Ms. Weston that she believed that since the District was not going to provide services, the Student was not going to receive a FAPE. She made it clear to the team that the Student was not going to return to school until the neuropsychological evaluation was completed.

4. The Written Notice, dated August 28, 2007, summarized the Parent's concerns and actions taken at the IEP meeting. The decision was made to end ESY services on August 31, 2007. Services that were to be added to the 2007-2008 school year IEP included a half an hour per day of special assistance to help the Student achieve her goals in Mathematics. The IEP would also include a goal on work completion and accuracy. The Written Notice stated that the Parent had initiated an independent neuropsychological evaluation, which would not be completed until sometime in September 2007. It stated, "It is anticipated that the recommendations generated by this evaluation will be available by September 24, 2007, so that these recommendations can be utilized during (the Student's) annual review." The Written Notice also included the Parent's concerns regarding the Student's safety at school and the District's suggestion that the Student meet with staff with whom she is comfortable prior to the beginning of school to review reporting procedures for bullying, the supports that could be in place prior to the beginning of school, and any concerns she may have. The Written Notice reported that the Parent notified the IEP team that the Student would not be meeting with the school staff prior to the beginning of school and would not be starting school on September 4, 2007. It stated that the Parent's belief was that a FAPE could only be provided at home with a tutor until the neuropsychological evaluation was completed.

5. In the Order of Dismissal of the Special Education Due Process Hearing, dated November 7, 2007, the parties stipulated in Fact No. 4. that the District had written an IEP for the Student and was prepared to implement it beginning on September 4, 2007, the first day of the school year.
6. In an interview with the complaint investigator, Janet Weston, the District's Special Education Director, stated that she learned that the Parent had no intention of enrolling the Student in the District for the 2007-2008 school year. Ms. Weston stated that the Parent had reported this to the IEP meeting attendees prior to Ms. Weston's arrival at the meeting on August 28, 2007.
7. On September 1, 2007, the Parent gave her landlord notice of her intention to move out of her home in Eastport, Maine.
8. On September 11, 2007, the Parent filed a due process hearing request. The Parent requested an order to require the District to provide in-home tutoring from September 11, 2007 to September 25, 2007.
9. On September 24, 2007, the Parent enrolled the Student in SAD #77. The staff from SAD #77 contacted the District requesting the Student's records.
10. An IEP meeting was also convened on September 24, 2007. Despite numerous attempts to contact the Parent in order to encourage her participation, the Parent did not attend. The Written Notice, dated September 24, 2007, indicated that the Student had not attended any classes since September 4, 2007, the beginning of the school year because, according to the Parent, the Student would not attend school until there was a safety plan in place.
11. The Written Notice also indicated that an IEP would include a half hour per day of special education assistance in mathematics. During the daily half hour, the student would also focus on increasing accuracy in her school work and completing her assignments. It was also agreed that she would take her tests in a quiet place and have extended time if she needed it. The Written Notice also reported that the Parent had not shared the results of the neuropsychological evaluation that had been completed by Dr. Christine Deering in September 2007.
12. The IEP, also dated September 24, 2007, included two measurable annual goals: 1) checking her own work for errors in answers, spelling, punctuation, sentence structure, and assignment completion; and 2) completing mathematical assignments with at least an average score of 70%, with assistance on understanding the concepts. The IEP also included 30 minutes per day of specially-designed instruction, the use of an assignment completion book, and extended time on tests and quizzes.
13. On October 1, 2007, the Parent moved to Cutler, Maine, and the Student began school there on the same day.

14. In an interview with the complaint investigator, the Parent stated that she had no intention of enrolling the Student into the District for the 2007-2008 school year. She reported that she gave her notice to vacate her apartment in early September 2007. She also stated that a draft safety plan was not presented to her at the IEP meeting on August 28, 2007, although it was discussed. The Parent stated that the first time she saw the draft safety plan was when it was sent to her during the complaint investigator process. After she reviewed the safety plan, the only change that she wanted was to add an adult supervisor to be present in the locker rooms while the Student was changing. The Parent did not indicate that the IEP, dated September 24, 2007, was inappropriate. The Parent also stated that, based upon the comments made by Ms. Weston at the August 28, 2007 IEP meeting, indicating that no services were going to be provided until the results of the neuropsychological evaluation were presented, the Parent felt that she had no option but to transfer the Student out of the District for her own safety.
15. In an interview with the complaint investigator, the Student stated that she was much happier in SAD #77. She stated that she had a very difficult time in the District because of the bullying that went on. She stated that, even though the teachers knew about the bullying, no one took the problem seriously. She reported that a certain group of girls would taunt her and a friend in the locker room and during games and at practices. She also indicated that she was called names and pushed around in the hallway at school. She was glad to have left Eastport.
16. In an interview with the complaint investigator, Janet Weston reported that the Student's Parent told her several times that she was not going to stay in the District. Ms. Weston stated that, regardless of that information, she had an obligation to design an IEP at the annual IEP meeting on September 24, 2007. She also stated that, up until recently, she did not believe that a safety plan should be designed as a result of her disability. She stated that if the Student had remained in the District, evaluations would have been scheduled, the IEP team would have discussed the results and made recommendations, and the District would have acted upon those recommendations. Ms. Weston reported that, although the Student left on September 24, 2007 to go to SAD # 77, the District did not send the new IEP until November 2007. The reason Ms. Weston gave for the delay was a change in formatting of the IEP document, which increased the time needed to prepare it.

VI. Conclusions

Allegation No. 1: Failure to development an IEP for the 2007-2008 school year.
MUSER §§VI.2.J, IX.3.D **NO VIOLATION**

Stipulated fact No. 4, from the Order of Dismissal in the Due Process Hearing Request, No. 08.025H, dated November 7, 2007, stated that the District had written an IEP for the Student and was prepared to implement that IEP in the Eastport

Elementary School beginning on September 4, 2007, the first day of the 2007-2007 school year. There was no evidence presented in this complaint investigation that this was not true. No violation is found under this allegation.

Allegation No. 2: Failure to develop a safety plan for the Student for the 2007-2008 school year. MUSER §§VI.2.J **NO VIOLATION**

Complaint No. 08.009C found that the District committed no violation of the IDEA or the Maine Unified Special Education Regulations (MUSER) with respect to the Student's safety during the 2006-2007 school year. No nexus was established between the bullying and any aggravation of the Student's Emotional Disability. Although there had been a recommendation to consider the development of a protocol for reporting harassment in Complaint No. 07.107C, it was not a mandatory corrective action plan item. The allegation in this case is essentially the same one presented in Case No. 08.009C. Similarly, there has been no additional evidence presented that there is a nexus between the bullying and any aggravation of the Student's Emotional Disability. Therefore, there is no violation of any special education statutes or regulations.

Allegation No. 3: Failure to provide a FAPE during the 2006-2008 school years. MSER § 1.3; MUSER VI.I. **NO VIOLATION**

The allegation includes both the 2006-2007 school year and the 2007-2008 school year. The complaint investigation report in Complaint No. 08.009C addresses any FAPE violations which occurred during the 2006-2007 school year. Since the Student did not attend, was not enrolled in the District for the 2007-2008 school year, and moved out of the District on October 1, 2007, the District was no longer responsible for providing the Student a FAPE. MUSER §§ IV.4.A, and IV.4.B.